

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TOBY A. ERHART,

Petitioner,

v.

PATRICK GLEBE,

Respondent.

No. C15-5901 BHS-KLS

REPORT AND RECOMMENDATION
Noted for: January 22, 2016

Petitioner has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 (Dkt. 1) and an application to proceed *in forma pauperis* (“IFP”) (Dkt. 3). Because petitioner appears to have sufficient funds with which to pay the \$5.00 court filing fee, the undersigned recommends the Court deny the application.

DISCUSSION

A district court may permit indigent litigants to proceed IFP upon completion of a proper affidavit of indigency. See 28 U.S.C. §1915(a). However, the court has broad discretion in denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963). By requesting the Court to proceed IFP, petitioner is asking the government to incur the filing fee because he allegedly is unable to afford the costs necessary to proceed with his cause of action.

Petitioner’s IFP application reflects he is currently employed with a net monthly income of \$55.00, has \$42.00 cash on hand, his average monthly receipts are \$88.33, and his average

1 monthly spendable balance is \$15.33. Dkt. 3, pp. 1-2. The undersigned recognizes that the
2 funds to which petitioner has access may not be great. However, given the fact that a prisoner's
3 basic needs are provided for while he is incarcerated and the minimal filing fee required to
4 proceed with this action is \$5.00, it is not unreasonable to expect petitioner to pay that fee from
5 those funds.

6 **CONCLUSION**

7
8 Because petitioner appears to have sufficient funds to pay the filing fee, the undersigned
9 recommends that the Court deny his application to proceed *in forma pauperis*.

10 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure
11 ("Fed. R. Civ. P."), Petitioner shall have fourteen (14) days from service of this Report and
12 Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file
13 objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474
14 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed set
15 this matter for consideration on **January 22, 2016**, as noted in the caption.
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17 **DATED** this 4th day of January, 2016.

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20 Karen L. Strombom
21 United States Magistrate Judge
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